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Labinal, Inc. and Nancy Weaver. Case 17–CA–22024

September 16, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On June 20, 2003, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings, and conclusions and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Labinal, Inc., Pryor Creek, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 16, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We shall issue a new notice to conform to the judge's Order.

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unlawfully maintain a rule which prohibits an employee from discussing another employee's pay without the knowledge and permission of the other employee.

WE WILL NOT unlawfully interrogate employees concerning their discussion of salaries and wages with each other.

WE WILL NOT unlawfully suspend and discharge employees because they engage in concerted activities with each other for the purpose of mutual aid and protection by discussing employee salaries and wages with each other and through an employee representative, concertedly complain about their salaries to us, and to discourage employees from engaging in these and other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the rule which prohibits employees from discussing another employee's pay without the knowledge and permission of the other employee, and advise employees in writing that the rule has been rescinded.

WE WILL, within 14 days of the date of the Board's Order, offer Nancy Weaver full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or to any other rights or privileges previously enjoyed.

WE WILL make Nancy Weaver whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the form of her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlaw-

ful discharge of Nancy Weaver, and WE WILL within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

LABINAL, INC.

Charles T. Hoskins Jr., Esq., for the General Counsel.
Charles S. Plumb, Esq. (Doerner, Saunders, Daniels & Anderson, L.L.P.), of Tulsa, Oklahoma, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. A charge was filed on December 26, 2002, by Nancy Weaver against Labinal, Inc. (Respondent or Labinal). The charge was amended on February 13, 2003. On February 21, 2003, a complaint was issued which alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act), by (a) maintaining a rule prohibiting its employees from discussing salaries and wages with each other, (b) interrogating employees concerning their discussion of salaries and wages with each other, (c) suspending Weaver, and (d) discharging Weaver. The Respondent denies violating the Act as alleged.

A trial was held in this matter on April 10, 2003, in Tulsa, Oklahoma. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. JURISDICTION

The Respondent, a corporation, manufactures aerospace wiring components at its facility in Pryor Creek, Oklahoma, where it annually purchased and received goods valued in excess of \$50,000 directly from points outside the State of Oklahoma. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Weaver was employed by the Respondent from November 1997 until July 2002. She was a database clerk in the document control department. At the time of her termination she was being trained to trade jobs with Gina Soles, who had to transfer because her husband became the supervisor of her department and the Respondent prohibits this. The training arrangement, which went on for weeks before Weaver was terminated in July 2002, involved Weaver and Gina Soles working together one half a day at Soles desk and spending the other half of the day working together at Weaver's desk.

Although she could not remember the exact date, Weaver testified that after Ray Soles had become her supervisor, he brought her paycheck to her for the first time and he also brought Gina Soles' pay stub to her while both she and Gina Soles were sitting at Gina Soles' desk. According to Weaver,

this occurred on a Friday. Weaver testified that she and Gina Soles were sitting side by side with their arms touching in front of the computer on Gina Soles' desk; that Gina Soles opened her pay stub and she saw Gina Soles' pay rate; that after she finished her training session with Gina Soles that day she went back to her desk in document control, and used her calculator to determine that Gina Soles was making \$30,000 a year; that at the time she was making \$27,000 a year; that she then told two other employees in her department, Celisa Rowland and Kathy Parrott, about Gina Soles' salary, indicating that Gina Soles opened her pay stub in front of her and she had just figured out Gina Soles' annual salary; that shortly thereafter Tina Burka and John Gifford came into the office and she told them that she had seen Gina Soles' pay stub and how much she was making; that she did not telephone anyone when she found out about Gina Soles' pay; and that all of these employees did not believe that it was fair, and Rowland told her that she should speak to her supervisor, Debbie Mason, when she returned to work on Monday.¹ On cross-examination Weaver testified that Gina Soles' pay stub was open for about 30 seconds; that Gina Soles did not show it to her voluntarily but rather just opened it; that she did not tell Gina Soles that she saw her pay rate, or that she intended to disclose it to other employees; that the day Gina Soles opened the pay stub in front of her was the same day that she told Rowland, Parrott, Burka, and Gifford about Gina Soles' pay rate; that she thought that this all occurred on a Friday and it was June 15, 2002 "or something like that" (Tr. p. 196); that she was not sure of the date but she remembered that Mason was not there that Friday; that on "08/08/02" she gave a written statement to the Oklahoma Employment Security Commission (OESC), Respondent's Exhibit 2, in which she indicated that she saw Gina Soles' paycheck on "07/14/02"; that July 14, 2002, is a Sunday; that she was not working on a Sunday; that she believed that the incident occurred in June 2002; that she told the National Labor Relations Board that the incident occurred on June 14, 2002, which is a Friday; and that the two prior checks before July 24, 2002 would have been given to the employees on July 15 and June 28, 2002.

Rowland, who is a clerk in document control, testified that Weaver called her on the phone and told her that "Gina's pay stub was in the desk" (Tr. p. 234); that she was in document control when Weaver telephoned her; that Weaver did not say where in the desk she found the pay stub but Weaver did say that Gina made \$30,000; and that Parrott was not at work that day. On cross-examination Rowland testified that she could not recall the date when Weaver telephoned her to tell her about Gina Soles' pay and it could have been in July or June 2002; and that before Weaver told her about Gina Soles' pay information, Gina Soles herself had told her, Rowland, about how much she made.

Rowland testified that the following day, in Rowland's presence, Weaver told a group consisting of Mason, Parrott, Gifford, and Burka that Gina Soles opened the pay stub in front of Weaver; that Mason was present when Weaver made this

¹ Previously these employees had discussed the unfairness of Gina Soles being allowed to take longer lunch hours than anyone else, and to leave work to get her daughter at daycare.

statement to her, Parrott, Gifford, and Burka about Gina Soles opening her pay stub in front of her; that later that day she told Gina Soles that Weaver had found out how much she, Soles, made, and she was telling everyone; that she told Gina Soles that Weaver had said the pay stub was in her desk and she did not tell Gina Soles that Weaver said that she had gotten into Gina Soles' drawer to find the pay stub; and that she told Weaver that it was "unequal" for there to be that difference in her and Gina Soles' pay and Weaver should take the issue to Mason. (Tr. p. 250.)

Mason testified that she did not know that shortly after finding out Gina Soles' pay information, Weaver began communicating it to employees.

According to her testimony, on Monday following her seeing Gina Soles' pay stub Weaver discussed the difference in her and Gina Soles' pay with Mason, who told her that she would get with her supervisor, Jean-Marc Calmels, to see what could be done about it.

Mason, who was at Labinal for over 21 years and had resigned 3 months before the trial herein, testified that she was Weaver's supervisor for over 2 years; that Weaver came to her and told her that she, Weaver, and Gina Soles, who were cross training, were sitting at Gina's desk when Gina opened her pay stub and Weaver saw that Gina made more money than her, and this concerned her; that she told Weaver that she would speak with her supervisor, Calmels; that Weaver spoke to her about seeing Gina Soles' paycheck sometime between mid-June and the end of June, 2002; and that it was about 6 weeks later that Weaver was fired.

According to her testimony, Mason spoke to Calmels the following week and he told her to get with human resources and find out what the pay difference was and then get with Nancy and let her know. Mason e-mailed Jennifer Painter, who is a human resources representative, and asked her to send Gina Soles' and Nancy Weaver's salary information.

Subsequently Mason called Weaver into her office. Mason had received an e-mail from human resources indicating what Weaver and Gina Soles were making. Mason showed it to Weaver, telling her that Calmels had given her permission to call human resources, and the e-mail was from Painter. The e-mail indicated that Gina Soles was making \$30,000 a year. Weaver testified that Mason said that it was not fair.

Mason testified that 2 or 3 weeks before Weaver was terminated she, Mason, discussed Gina Soles' pay with Weaver. In response to Mason's request, Painter e-mailed Gina Soles' and Weaver's salary information. Mason testified that she told Weaver that Gina probably made more because she previously was a Boeing employee and she has experience in the aircraft harness; and that she received that e-mail from Painter within a week after she, Mason, spoke with Calmels about the pay issue.

About one week before she was to take over Gina Soles' job, Weaver told her supervisor in the document control department, Mason, that she did not believe that she had adequate training to take over Gina Soles' position. Mason e-mailed her supervisor, Calmels, who was on vacation at the time, to set up a meeting regarding the question of whether Weaver had adequate training. Mason sent Weaver a copy of her e-mail to Calmels. Subsequently Weaver spoke to Calmels regarding her training.

Gina Soles, who along with her husband no longer work for Labinal, testified that Rowland told her that one of the days that she, Soles, was not at work Weaver called her and told her that she had found Soles pay check in her desk drawer; that that day she did not do anything to determine whether Weaver had actually gotten into her desk drawer and her paychecks; that the day Rowland told her about what occurred, she, Soles, spoke to her supervisor who was her husband, and he told her to that she probably needed to speak with Painter in human resources; that she told Painter what Rowland had told her, namely that Weaver saw her pay stub and was talking to other employees about it; that it was not her common practice to put her pay stubs in the desk drawer, but if she was busy she did; that she did not even remember that there were actually pay stubs there; that one of the pay stubs in the drawer was open and the other one was not; that her pay stub was actually a direct deposit statement; that usually while she was at work she tore off the tabs and broke the seal to the pay stub, looked at it, and then put it in her purse; that there were instances when she was busy or someone was at her desk when she received the pay stub, and in those instances she did not open the pay stub, and she would usually put it in her middle desk drawer under a pencil tray; and that she never opened a pay stub with someone else present. When asked by Respondent's attorney if during her cross training with Weaver, she, Soles, "ever open[ed] a pay check while . . . [Weaver] was sitting there next to you, or in her presence," Soles responded, "I don't recall opening a pay check. I don't recall her opening any pay checks in front of me." (Tr. p. 260). Gina Soles further testified that opening a paycheck when someone is sitting right next to her is not something that she ever does; that after talking to Painter she, Soles, looked in her desk drawer; that there were two pay stubs in the drawer and one was open and the other was not; that she does not put open pay stubs in her drawer; that she did not recall opening the pay stub that was in her drawer; that she had been told that Weaver claimed that she, Gina Soles, opened the pay stub in front of her, Weaver, on the 15th (apparently referring to July 15, 2002); that the pay stub for the 15th was not open and she opened it in front of Mason, who initialed the pay stub; that she then brought the pay stub for the 15th to Painter and told her that the pay stub that Weaver supposedly saw her open was still sealed when she, Soles, took it out of her desk drawer after Rowland told her what Weaver had done; and that Weaver never told her that she knew about her pay rate and was going to tell it to other employees. On cross-examination Gina Soles testified that while she was at Weaver's desk she accidentally opened an e-mail of Weaver's in or about June 2002 on a day that Weaver was not at work; that she did not remember what the e-mail was about; that she and Weaver had been sending e-mails to people, including Calmels, and they received e-mails back; that it was a practice for her to open the e-mails when Weaver was not at work; that Labinal had not yet put her e-mail on Weaver's computer; that she did not make it a standard practice to open a pay stub and put it in her desk drawer but it is possible that she did that; that she did not check her desk drawer until the day after Rowland told her about Weaver telling other employees about her, Gina Soles', pay; and that she did take long lunch hours but she was not aware that it bothered

other employees, and when she took a long lunch hour she would work later. When asked by Counsel for General Counsel if the accidentally opened the e-mail concerned a complaint that Weaver had about inadequate training that she received from Gina Soles, Soles testified "Actually, now that you stated that, I do. I didn't recall earlier what it was about." (transcript page 276) On redirect Gina Soles testified that she put the pay stubs under the pencil tray because the drawer did not lock. Subsequently Gina Soles testified, "I know for a fact that I did not open ... [her pay stub] in front of anyone." (Tr. p. 280)

On July 25, 2002, Mason told Weaver that she was needed in human resources. Weaver met with the Director of Human Resources, Thomas Briggs, with Painter, Calmels, and Mason present. Weaver testified that Briggs conducted the meeting; that she thought Painter took notes; that the first thing that Briggs said was "Is this another of your pot stirring episodes" (Tr. p. 178); that she told Briggs that she did not need to sit and listen to him calling her a pot-stirrer again; that Briggs asked her why she had told the other girls about Gina Soles' wages and she told him that she did not feel like it was fair; that Briggs did not ask her how she got the information; that Briggs told her that they had spoken with three or four employees who said that Weaver told them what Gina Soles' wages were; that Briggs asked her how she would feel if someone talked about her wages when she was the new kid on the block; and that then Briggs told her to go back to work.

When she went back on the floor, Weaver told employee Doris Brezenski what she, Weaver, was accused of at the meeting in human resources. According to the testimony of Weaver, Brezenski then said that Gina Soles came to her a couple of weeks ago and told her that Weaver was telling people that she got into Gina Soles' desk drawer, got her check out, and was telling people what Gina Soles made. Weaver then telephoned Mason, told her what she had just heard, and told Mason that she had never been in Gina Soles' desk drawer. Mason told Weaver that she would call Calmels and tell him.

Later that day, about 3 p. m., Weaver was called into Calmels' office. Painter, Mason, and Calmels were there. Weaver was told to sit in the breakroom until it was time to go home, and to stay home the next day.

Rowland testified that she was interviewed by Labinal supervisors about this issue a couple of days after Weaver found out how much Soles made, and a couple of days before Weaver was terminated.

Mason testified that she, along with Briggs, Calmels, and Painter were present for the interviews of Weaver, Parrott, Rowland, and Burka; that the interviews all occurred on the same day, which was 1 or 2 days before Weaver was fired; that she also participate in the interview of Gina Soles in Briggs' office; that Briggs told Weaver that Gina Soles had come to Human Resources and said that her pay scale was being discussed amongst the employees and it was a concern to her; that Briggs asked Weaver if she had seen Gina Soles' paycheck, or how she had come about the information; that Weaver told Briggs that she was sitting next to Gina Soles when Soles opened her pay stub; that she believed that both Briggs and Weaver used the word "pot stirrer" but she could not remember the context; that it was decided to send Weaver home until the

decision was made whether to terminate or suspend her; that Calmels said that he would talk to his Director, Tim Dickinson, and get his feeling on the situation; that she was asked if she could trust Weaver and she responded "No"; and that she was not asked the basis for her response but she believed that if Weaver had gone into the desk and taken the check out, she could not trust Weaver. On cross-examination Mason testified that during the employee interviews Rowland told the supervisors that Weaver told her that she had gotten into Gina Soles' desk drawer and gotten her pay check out of the drawer; that since she was Weaver's supervisor, the other supervisors asked her whether she believed Weaver or Rowland; and that she told the other supervisors that she believed Rowland. Subsequently Mason testified that when she was in Briggs office, Gina Soles told them that Rowland came to her and told her that Weaver said that she got into Gina Soles' desk and looked at the check.

Thomas Briggs, who has been the Respondent's director of human resources for over 5 years, testified when called by General Counsel that he, Calmels, Painter, and Mason interviewed the involved employees including Gina Soles; that the number one purpose of the interviews was to determine how Weaver got the information; that their focus was on how Weaver got the information, and whether she was authorized to have it and to disclose it; that he asked Parrott, Rowland, and Gifford whether they had conversations with Weaver about Gina Soles' pay information; that he asked Weaver whether she had a conversation with Gifford, Parrott, and Rowland about Gina Soles' pay information; and that he believed that Weaver was the one who said "pot-stirrer."

On July 26, 2002, at about 3 p.m. Painter telephoned Weaver and told her that she was terminated effective as of July 25, 2002. Painter also told Weaver that she could come in on the following Monday to pick up her personal belongings, and she should call so that someone could accompany her. Weaver testified that Painter did not give any reason for the termination. Before this, Weaver had never been disciplined by Labinal, she had no attendance problems, and she had never received verbal or written warnings of any kind. On cross-examination Weaver testified that an employee's pay rate is private and confidential; that she received an employee handbook at Labinal; that she was familiar with the rules of conduct that were posted in the Respondent's facility; that it would be wrong for an employee to tell other employees about another employee's pay without the knowledge and permission of that employee; that she resented the fact that Labinal allowed Gina Soles to take longer lunch breaks than anyone else and leave in the middle of the day to pick up her daughter; that there is no policy at Labinal with respect to talking about wages; and that no one other than her was disciplined even though the others discussed pay.

On July 29, 2002, Weaver was escorted to her desk by Mason to get her personal things, and she was told that her check would be mailed to her. According to Weaver's testimony, when she received her paycheck, there still was no reason given for her termination. Weaver testified that she never received a document marked for identification as General Counsel's Exhibit 17, and she never received any letter from Labinal which explained why she was terminated.

Rowland testified that she is not aware of any policy or rule or practice that prohibits employees from talking about pay; and that employees are entitled to keep their own pay information confidential if they want to. On cross-examination Rowland testified that Gina Soles took a longer lunch break than she, Rowland, was able to take, and Gina Soles was allowed to pick up her daughter from daycare when she, Rowland, could not take that kind of leave; that she had conversations with Weaver and Parrott about this being unfair; and that Weaver resented Gina Soles because Weaver believed that Soles was getting special treatment. On recross Rowland testified that she did not know if she would say that Weaver totally resented Gina Soles but Weaver's feelings were based on the fact that Gina Soles took long lunch hours, got to leave work when other employees could not, and the difference in pay.

Mason testified that in addition to the employee handbook, General Counsel's Exhibit 2, and disciplinary procedures, General Counsel's Exhibit 3, she remembered a Labinal memorandum from 2001 regarding work ethics that was sent to her supervisor, Calmels, which she distributed to employees who signed it; and that the memorandum regarding work ethics indicated that "we were not to talk about other people's pay status" (Tr. p. 213). On cross-examination by the Respondent's attorney, Mason testified that in the e-mail that was sent around Briggs indicated that he believed that it was wrong to look at other people's paychecks, and to disclose other people's pay information; and that the e-mail referred to instances in which people find out and disclose other people's pay information, rather than discussing their own; and that there was no limitation on employees talking about their own pay information amongst each other. On redirect Mason testified that at Labinal while a person was free to discuss their own pay, discussing anyone else's pay was prohibited. And on recross Mason testified that the employees could discuss another employee's pay as long as the other employee knew it and was okay with it.

Gina Soles testified that she was not aware of any policies or rules that employees were prohibited from discussing their pay; and that no one told her that she could not talk about her pay and she never knew of any such policy or rule at Labinal. On cross-examination Gina Soles testified that she considered her pay information to be private; that she did not actually share her pay information with another employee before the incident with Weaver; that she did not share her personal pay information with Rowland; that she did not recall sharing her pay information with anybody; that she did not recall telling Rowland her pay information; and that she was friends with Rowland, they sat together at lunch, but they never discussed pay.

When called by the General Counsel, Briggs testified that before the incident in question he had never had a problem with Weaver; that General Counsel's Exhibits 2, 3, and 5, which are pages from the Respondent's employee handbook, the disciplinary procedures, and the rules of good conduct, respectively, are in place at Labinal; that in her standard performance evaluation form or annual review in January 2000, General Counsel's Exhibit 6, Weaver had a overall performance rating of very good; that in her standard performance evaluation form or annual review in January 2002, General Counsel's Exhibit 8, Weaver had a overall performance rating of exceeds expecta-

tions; and that General Counsel's Exhibit 10 was a notice he sent to Jonette Sikes, who was a human resources representative at the time. The memorandum reads as follows:

DATE: November 5, 1999

TO: Jonette Sikes

FROM: Tim Briggs

SUBJECT: Employee Confrontation

CC:

As discussed, a recent confrontation initiated by you, with Jason Moore cannot be ignored. There are three issues to be made.

1. You are not to bring a personal dispute to the floor.
2. You should not have touched Jason when you were angry with him.

3. You should not have made a statement that could be interpreted as a threat.

I expect you to use better judgment than you have displayed in this circumstance. You will now have to work hard to overcome the negative issues that have arisen as a result of this confrontation.

I also expect that there will be no repeat of this type of behavior.

Briggs further testified that he did not remember anything about the 3-day suspension of James Masterson in April 1999, General Counsel's Exhibit 12, and such a suspension is fairly rare; that General Counsel's Exhibit 13 is a memorandum from Norman Jordan, who at the time was the vice president and general manager of Labinal, to him dated June 4, 2001, which reads as follows: "This message is to document that I gave James Masterson a verbal warning to cease touching female personnel in the workplace. This was after witnessing him pulling the hair of a QA inspector (Jamie) on Friday."; that General Counsel's Exhibit 14 are memorandums to him from Charles Campbell, who is the director of quality, and Jordan dated June 15, 2001 regarding the unprofessional conduct of Masterson on the production floor with respect to very personal and animated conversations with employee Missy Winfree, who was dating Masterson, that created "an unprofessional and/or potentially threatening work environment"; that he believed that General Counsel's Exhibit 14 was a written warning but it is not signed by Masterson and the typical written warning form was not used in this instance; that Weaver was terminated "for stealing personal and private, confidential information, and then without authorization of the owner of that information, she disclosed it" (Tr. p. 82); that Weaver was told that her offense was stealing; and that

We could not, at that time, prove that she had stolen it, but we believed based on what she had said to different employees and what we were told by those employees, what we were told by Gina Soles, that we believed, based on educational evaluation, that that is what had happened. [Tr. p. 82.]

In response to questions of the Respondent's attorney, Briggs testified that the Rules of Good Conduct, General Counsel's Exhibit 5 are posted in both of the lunch rooms and in the mail room, which is in front of the office building; that the rules which were involved in Weaver's situation were listed

as violations which may result in termination on the first offense, namely "B. Unauthorized possession, removal, or destruction of the property of another employee or of Labinal, Inc." and "E. Dishonesty, including falsifying company records"; that as set forth in General Counsel's Exhibit 2, the Employee Handbook, page 9, Roman numeral IV, Labinal requires its employees to act honestly and with integrity, insofar as their relationship with co-workers is concerned; that with less severe offenses Labinal tries to follow the progressive discipline described on page 12 of the Employee Handbook but dishonesty and integrity was a severe hurdle; that talking about pay information, in and of itself, is not an offense; that trying to find out how Weaver obtained the pay information of Gina Soles was the focus of the questioning of the employees; that the employees told three different stories in that Rowland said that Weaver telephoned her and told her that she found the paycheck in Gina Soles' desk drawer and Weaver told Rowland how much money Gina Soles made, Parrott said that Weaver told her that she had seen the paycheck when Gina Soles opened it in Weaver's presence, and Burka said that Weaver told her that she had found or seen the check on the desk; that Weaver indicated that Soles had opened the check in front of her so that she could see the pay check; and that "[t]hen, if that was, in fact, true, then certainly disciplinary actions would likely not have been necessary because if she [Gina Soles] had not protected that information — . . . —it could have been discussed" (emphasis added) [Tr. p. 95, 96] Briggs further testified that during her interview Gina Soles said that typically she did not even open her pay stub and she would normally take it still sealed and place it under a pencil tray in her desk drawer until she took it home; that Gina Soles also said that she would never open her paycheck near anyone else and if she did open the pay stub she would put it in her purse; that Weaver's supervisor, Mason, said that she would be more likely to believe Rowland over Weaver; and that Mason said that she did not feel that she could trust Weaver in the future, and this was extremely important because her supervisor was very supportive of the termination; that none of the supervisors disagreed that Weaver should be terminated; that Labinal does not have any policy, rule, or practice prohibiting employees from discussing their pay; and that Labinal had never had a situation like this before.

On further examination by General Counsel Briggs testified that Weaver's account to him of what happened never varied but according to the employees, they were given three different versions of what happened by Weaver.

Painter testified that the investigation of Weaver began on the morning of July 25, 2002; that she participated in the interviews of Weaver, Parrott, Burka, Rowland, Gifford, and Gina Soles on July 25, 2002; that she took notes of all of the interviews; that General Counsel's Exhibit 16.1 are the notes she took of the interviews of Parrott, Rowland, and Burka;² that she

was not sure where the notes of the interviews of Weaver, Gina Soles, and Gifford are; that she participated in preparing the documents that the General Counsel requested under subpoena; that during the interview of Weaver, Briggs asked her whether she had discussed Gina Soles' pay information with her co-workers; that Briggs asked the same question of Rowland, Burka, and Gifford; that the right side of General Counsel's Exhibit 16.1 are her notes of the conversation she was going to have with Weaver concerning her termination; that she did telephone Weaver and told her that she was terminated, and she, Painter, essentially followed her notes during this conversation; that General Counsel's Exhibit 17 is an undated letter confirming the termination conversation that she wrote to Weaver; that while General Counsel's Exhibit 17 is unsigned, she would have signed it if she had mailed the letter to Weaver; that it is possible that she did not mail the letter to Weaver since it is unsigned; that Labinal does not have any document that reflects that she mailed this letter to Weaver on a particular day; that she was involved in assisting Labinal in defending against Weaver's claim for unemployment; and that General Counsel's Exhibit 18 is a letter, dated August 13, 2002, she sent to the OESC which indicates as follows:

G.S. and N.W. informational meetings K.P.=Yes. She saw how much and that she saw.
 Why? The wages are not fair.
 Celisa was there.
 How did she find out?
 Gina opened check up. They were at Nancy's desk.
 Monday upon Kathy's return.
 Did she want you to help rally for a \$?
 She made that much money and she started out way after Nancy did.
 Did you feel it was justified?
 Yes.
 C.R.=Have you been in a conversation where she shared pay?
 Yes.
 Why?
 Gina made more?
 Why talk to you?
 I don't know.
 Anyone else around?
 I don't know.
 When NW told KP were you there?
 Probably.
 She brought up more than once?!
 Did she want your support?
 Feedback on whether to go to JM or DM.
 How did Nancy find out?
 Gina opened check & pay stub in desk, NW looked.
 T.B.= You were told by NW conc. GS pay?
 Yes.
 When?
 I don't know. Why would she tell you?
 I am not sure. Always wondered Texans made?
 She said she saw it laying on desk.
 It was just the two of us.
 I told KP that NW told me. That was only one.
 CONT. See Tab # 2
 The reference by Burka to "Texans" might have been made because Gina Soles and her husband are from Texas.

² In her notes of the interviews, Painter used the initials of the employees. G.S. is for Gina Soles, N.W. is for Nancy Weaver, K.P. is for Kathy Parrott, C.R. is for Celisa Rowland, and T.B. is for Tina Burka. The notes read as follows:

Nancy Weaver was terminated from Labinal, Inc. on 07-25-02 due to disclosing confidential information from a company document (another employee's paycheck). Such blatant disrespect of another employee's privacy will not be tolerated here at Labinal, Inc. We feel that Nancy should not receive her unemployment benefits based on her actions of hurtful conduct towards another employee.

Painter further testified that as part of her participation in the unemployment claim, she participated in an investigation conducted by OESC and paragraphs numbered 5 and 6 of General Counsel's Exhibit 19, dated August 15, 2002, reflect her statements to the interviewer from OESC. They read as follows:

5. Nancy said she later heard that this other girl was telling everyone that Nancy had gone through her desk and found her check stub. Is that the reason Nancy was fired?

No, it was not. We really didn't go into how she found out: the fact that she went through private information was enough but it was more that she had divulged this.

6. Did anyone, at any point, ask Nancy what was going on—before she was fired?

Yes. She admitted telling 4 others of Gina's salary and we did investigate; question the other employees and all their stories were the same. She had told one she looked in Gina's desk at the pay stub and she told one it was laying on the desk and she told one that Gina had opened it in front of her but all the rest was the same story. So, we didn't go into how she found out as we couldn't prove that. [Emphasis added.]

In response to questions asked by the Respondent's attorney, Painter testified that on July 25, 2002, she received a telephone call from Gina Soles who told her that it had been reported to her that Weaver had gotten into her desk and took her paycheck out, found out what she made, and then had told others; that when they interviewed the employees they were trying to find out how Weaver obtained the pay information; that Labinal does not have any policy, rule or practice that prohibits employees from discussing their own pay or pay in general; that other than Weaver, none of the employees were disciplined for talking about other people's pay; that Weaver received discipline because "[I]t was the manner in which she obtained this information, by taking it out of the drawer of Gina Soles' desk" (transcript page 152); that the fact that Weaver disclosed the pay information to others without Gina Soles' permission also came into play; that in her meetings with Briggs, Calmels, and Mason no one ultimately disagreed with the decision to terminate Weaver; and that Mason said that Weaver could not be trusted.

Subsequently Painter testified that during the July 25, 2002 interview of Weaver, Briggs asked her if this was how she would gather information from someone, by going in their desk, Weaver said that she did not have to listen to this, and that was the end of the interview.

General Counsel's Exhibit 19.1 is the Order of Decision of the Appeal Tribunal of OESC. As here pertinent, it reads as follows:

The issue to be resolved is whether the claimant was discharged for a reason amounting to misconduct connected with the work.

....

The claimant was terminated for revealing another employee's salary to other workers. The claimant had seen the other employee's paycheck when it was being opened and noticed the other employee made more than she did. The claimant then went to some of her co-workers and complained about this. The claimant did reveal how much the other person was paid. The claimant felt she was being paid unfairly. The claimant was then discharged.

Section 2406 of the Oklahoma Employment Security Act provides a disqualification for claimants who are discharged from their last employment for misconduct connected with work. . . . The term 'misconduct' has been defined as an act or course of conduct evidencing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standard of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligation to his employer.

The employer contends the claimant revealed confidential company information. The claimant regarded the information not as company information but rather information belonging to the person whose salary she revealed. The Hearing Officer finds the claimant is correct in this assertion. The information as to the person's salary was the property of that person and not the employer. This does not mitigate the claimant's action, however, but rather exacerbates it. If the claimant only discussed company information with the company, no breach of confidentiality would have occurred. The claimant's actions violated the personal rights of the other individual involved, however. The claimant misused and breached the confidentiality of that person. Her actions were done to create a disruption in the work place and so demonstrate a disregard of the employer's interest. The claimant was discharged for misconduct.

The Commission's determination is **AFFIRMED**. [Citations omitted and emphasis added.]

General Counsel's Exhibit 15.1 was prepared by Labinal in response to General Counsel's subpoena. The last two pages cover employees terminated by Labinal from January 1, 2002 through April 3, 2003. The reason specified therein for the termination of Weaver is "THEFT OF PRIVATE/CONFIDENTIAL INFORMATION."

Analysis

Paragraph 4(a) of the complaint alleges that since on or about June 26, 2002 Respondent has unlawfully maintained a rule prohibiting its employees from discussing salaries and wages with each other. Counsel for General Counsel on brief contends that the Respondent maintained a policy prohibiting the discussion of wages by employees; that supervisor Mason testified that the Respondent issued ethics rules in 2001 that prohibited the discussion of an employee's salary by any other employee and she distributed this rule to the employees in her

department; and that such a rule is clearly prohibited by the Act because, by its very nature, it tends to coerce employees in the exercise of the rights under Section 7 of the Act, including the right to discuss terms and conditions of employment, *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992). The Respondent on brief argues that Labinal did not have a rule prohibiting employees from discussing salaries and wages; that employees Weaver and Roland, among others, confirmed this; that the ethics memorandum referred to by Mason advised employees they should not find out another employee's personal pay information and disclose it to others without the employee's knowledge or permission; that Weaver's co-workers who discussed pay information with her were not disciplined; and that there was no limitation on employees discussing their own pay or salary information amongst one another.

In more ways than one Briggs himself "let the cat out of the bag" when he testified that if Gina Soles had opened the pay stub in front of Weaver so that Weaver could see it, "[t]hen, if that was, in fact, true, then certainly disciplinary actions would likely not have been necessary because if she [Gina Soles] had not protected that information—. . .—it could have been discussed." (Emphasis added.) (Tr. pp. 95-96.). The Respondent on brief submits that the ethics memorandum referred to by Mason advised employees they should not find out another employee's personal pay information and disclose it to others without the employee's knowledge or permission. The problem with such a rule was pointed out by Briggs' testimony. If someone innocently obtains such information, as Weaver did in my opinion, they should be allowed to discuss it with their fellow employees (as Briggs testified, "it could have been discussed."). That would seem to be in accord with common sense. To prohibit one employee from discussing another employee's pay without the knowledge and permission of the other employee muzzles employees who seek to engage in concerted activity for mutual aid or protection. By requiring that one employee get the permission of another employee to discuss the latter's wages, would, as a practical matter, deny the former the use of information innocently obtained, which is the very information he or she needs to discuss the wages with fellow workers before taking the matter to management. Such an approach adversely affects employee rights. The Respondent has not established a substantial and legitimate business justification for its policy. The Respondent's policy violates Section 8(a)(1) of the Act.

Paragraph 4(b) of the complaint alleges that on or about July 25, 2002, the Respondent unlawfully interrogated employees concerning their discussion of salaries and wages with each other. General Counsel on brief contends that Briggs asked each involved employee if they discussed Gina Soles' pay information with Weaver; that such an inquiry was not necessary to determine how Weaver saw Gina Soles' pay information; that Briggs could have limited his inquiry to asking if the employee knew how Weaver obtained the information; and that Briggs' interrogations were overbroad, tended to coerce employees with respect to their right to freely discuss wages, and consequently were a clear violation of Section 8(a)(1) of the Act. The Respondent on brief argues that the interviews were

tailored to inquire about Weaver's obtaining and publishing Gina Soles' pay information to other employees.

According to Painter's notes of the interviews, as set forth above, Briggs (1) asked Parrott, among other things, (a) if Weaver wanted Parrott to help rally for money, and (b) whether Parrott "felt it was justified," (2) asked Rowland, among other things, (a) why Weaver spoke with her about Gina Soles' pay information, (b) why Weaver talked to her, (c) if she was there when Weaver told Parrott, and (d) whether Weaver wanted her support [to which, as noted above, Rowland replied that Weaver was seeking feedback on whether to go to JM (Cal-mels) or DM (Mason)], and (3) asked Burka, among other things (a) why would Weaver tell her about Gina Soles' pay, and (b) who she told that Weaver told her. As can be seen, Briggs' inquiries went beyond trying to determine how Weaver obtained the pay information and whether she published it. The involved employees were interrogated by the Director of Human Resources in his office, with the Industrial Engineering Manager, a supervisor, and a Human Relations Representative, who was taking notes, present. An employer violates Section 8(a)(1) of the Act when it engages in conduct which has a natural tendency to restrain employees in the exercise of rights guaranteed them under Section 7 of the Act. That Section, which grants employees the right to engage in concerted activities for mutual aid and protection, encompasses the right of employees to discuss what wages are paid by their employer, as wages are a vital term and condition of employment. *Triana Industries*, 245 NLRB 1258 (1979). In the circumstances extant here, the Respondent's interrogations were coercive and the Respondent violated Section 8(a)(1) of the Act.

Paragraphs 5(b) and (c) of the complaint allege that on July 25, 2002 and on July 26, 2002, respectively, the Respondent suspended and then terminated Nancy Weaver because employees engaged in concerted activities with each other for the purposes of mutual aid and protection by discussing employee salaries and wages with each other and through an employee representative, concertedly complaining about employee salaries to the Respondent, and to discourage employees from engaging in these and other concerted activities. Counsel for General Counsel on brief contends that the Respondent suspended and discharged Weaver for engaging in the protected activity of discussing salaries; that Respondent's history of responding to serious employee misconduct with verbal and written warnings shows that it took an extreme measure in discharging Weaver; that as Briggs conceded, Weaver never wavered in her explanation that she saw Gina Soles' pay information in plain sight when the two sat shoulder to shoulder and Soles reviewed her pay statement; and that once the Respondent determined that Weaver initiated the discussion of Soles' pay information it concluded that she must be fired. The Respondent on brief argues that Weaver's termination did not violate the Act because Weaver was not engaged in activity protected by the Act; that alternatively, Weaver's termination did not violate the Act because Labinal's motivation for terminating Weaver was Weaver's acts of theft and dishonesty, not that she was engaged in discussions relating to wages and salaries; and that notwithstanding any temptation to revisit this issue with hindsight, the evidence is undisputed that after an investigation Labinal hon-

estly believed in good faith that Weaver had stolen Soles' pay information and disclosed it.

After the interrogations of the involved employees and after Weaver was terminated effective July 25, 2002, Painter, who sat in on the interrogations and the subsequent meetings to determine whether Weaver should be fired, advised OESC on August 13, 2002, as here pertinent, as follows:

Nancy Weaver was terminated from Labinal, Inc. on 07-25-02 due to disclosing confidential information from a company document (another employee's paycheck). Such blatant disrespect of another employee's privacy will not be tolerated here at Labinal, Inc.

It is noted that at this point in time nothing is said by Labinal about any theft of pay information. Two days later Painter gave the following responses to OESC:

5. Nancy said she later heard that this other girl was telling everyone that Nancy had gone through her desk and found her check stub. Is that the reason Nancy was fired?

No, it was not. We really didn't go into how she found out: the fact that she went through private information was enough but it was more that she had divulged this.

6. Did anyone, at any point, ask Nancy what was going on - before she was fired?

Yes. She admitted telling 4 others of Gina's salary and we did investigate; question the other employees and all their stories were the same. She had told one she looked in Gina's desk at the pay stub and she told one it was laying on the desk and she told one that Gina had opened it in front of her but all the rest was the same story. So, we didn't go into how she found out as we couldn't prove that. [Emphasis added]

Again Labinal does not allege that Weaver was terminated for stealing the pay information. Indeed, Labinal concedes that it did not go into how Weaver found out.

As noted above, based on the information provided to it the OESC Appeal Tribunal, a little over a month later, made the following finding: "The claimant had seen the other employee's paycheck when it was being opened and noticed the other employee made more than she did."

As noted above, Briggs testified at the trial herein that Weaver told him that Soles had opened the pay statement in front of her so that she could see the pay statement; and that "[t]hen, if that was, in fact, true, then certainly disciplinary actions would likely not have been necessary because if she [Gina Soles] had not protected that information—. . . — it could have been discussed" (emphasis added) (transcript pages 95, 96).

Now at the trial herein Painter, in response to the Respondent's attorneys questions, testifies that Weaver received discipline because "[I]t was the manner in which she obtained this information, by taking it out of the drawer of Gina Soles' desk" (transcript page 152); and that the fact that Weaver disclosed the pay information to others without Gina Soles' permission also came into play. Now the Respondent is arguing contrary to what it indicated to OESC less than one month after Weaver's termination. Now Briggs takes the position that Weaver was terminated because the Respondent believes that she stole the

pay information and divulged it.³ So now, in effect, the Respondent does not agree with the finding of OESC that "The claimant had seen the other employee's paycheck when it was being opened and noticed the other employee made more than she did." In my opinion, that is exactly what happened. Rowland was not a credible witness. Her testimony was contradicted (1) by Mason, who contrary to the testimony of Rowland testified that she did not know that shortly after finding out Gina Soles' pay information Weaver began communicating it to employees,⁴ (2) by Gina Soles, who contrary to the testimony of Rowland, testified that she did not discuss her pay with Rowland, (3) by Weaver, who contrary to the testimony of Rowland, testified that she did not telephone anyone after finding out Gina Soles pay, (4) by Painter's notes of what Parrott and Burka said during their interrogations on July 25, 2002, which is contrary to Rowland's testimony about them both being told at the same time by Weaver in Rowland's presence,⁵ and (5) Painter's notes of what Rowland said during her interrogation on July 25, 2002, namely that "Gina opened check," and the fact that Painter's notes make no mention of Rowland indicating during her interrogation that Weaver telephoned her to tell her about Gina Soles' pay.⁶ The Respondent did not thoroughly investigate this matter. Originally it appears that the Respondent did not choose to rely on the assertions of Gina Soles if she declared unequivocally that she did not open her pay statement in front of Weaver.⁷ Now assertedly the Respondent chooses to rely on this individual who admittedly took a less than meticulous approach to maintaining her pay information. Indeed, she admittedly did not even remember that she had a month's worth of pay stubs in her unlocked desk drawer. Perhaps Gina Soles does not remember previously telling her pay information to Rowland. Perhaps Gina Soles does not re-

³ Briggs' testimony that Weaver was told that her offense was stealing is not credited. There is no credible evidence of record that Weaver was ever told this by the Respondent.

⁴ As noted above, more than once Rowland testified that Mason was present when Weaver told Parrott, Burka, and Gifford about Gina Soles' pay.

⁵ According to Rowland, she was present when Weaver told Parrott and Burka, who were together with Mason and Gifford at the time, that Gina Soles opened the pay stub in front of Weaver. If that was the case, it is not clear how Burka could have said "she [Weaver] saw it laying on the desk" during her July 25, 2002 interrogation. But that is exactly what Painter's notes of the interrogation indicate. If Rowland were believed, how could there be more than two versions?

⁶ According to Painter's notes of the Rowland interrogation, Rowland was asked if anyone else was around when Weaver told her about the pay information. Rowland did not respond that Weaver told her over the telephone the first time. According to Painter's notes Rowland said "I don't know."

⁷ The Respondent did not turn over the notes of Gina Soles' July 25, 2002 interrogation although they were subpoenaed by Counsel for General Counsel. Perhaps during her July 25, 2002 interrogation Gina Soles was less than unequivocal about whether she opened her pay statement in front of Weaver. General Counsel requests an adverse inference against the Respondent for failing to produce the notes of Gina Soles' interview. I draw an adverse inference that the documentation which is exclusively within the control of the Respondent, if produced, would not support the Respondent's position with respect to their reliance on what Gina Soles told it.

member opening her pay statement in front of Weaver. I credit Weaver's unwavering testimony that she saw Gina Soles' pay information when Gina Soles opened the pay statement in front of her.

The Respondent now argues that it honestly believed in good faith that Weaver stole the pay information. The problem with this argument is that I do not believe that the Respondent acted in good faith. Briggs intentionally baited Weaver at the outset of her July 25, 2002 interrogation by accusing her of "pot-stirring."⁸ The interrogation almost ended there, which would have served Briggs' purposes. Painter's notes of the July 25, 2002 employee interrogations demonstrate that Briggs was trying to find out if the involved employees supported any attempt to get higher pay. Weaver was terminated because she was being a "pot-stirrer." Weaver engaged in protected concerted activity. Painter's notes of the July 25, 2002 interrogations leave no doubt that the Respondent had to appreciate this fact. And Briggs' testimony at the trial herein, namely "[t]hen, if that was, in fact, true, [that Gina Soles opened the pay statement in front of Weaver so that she could see the pay statement] then certainly disciplinary actions would likely not have been necessary because if she [Gina Soles] had not protected that information—. . .—it could have been discussed" (emphasis added) (Tr. pp. 95, 96), demonstrates that Labinal appreciated the situation it was faced with and it changed its tack to the Respondent had a good-faith belief that Weaver stole the pay information. The Respondent violated Section 8(a)(1) of the Act as alleged when it suspended and terminated Weaver for engaging in concerted protected activity.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent violated Section 8(a)(1) of the Act by unlawfully maintaining a rule which prohibits an employee from discussing another employee's pay without the knowledge and permission of the other employee.
3. Respondent violated Section 8(a)(1) of the Act by unlawfully interrogating employees concerning their discussion of salaries and wages with each other.
4. Respondent violated Section 8(a)(1) of the Act by unlawfully suspending Nancy Weaver on July 25, 2002.
5. Respondent violated Section 8(a)(1) of the Act by unlawfully discharging Nancy Weaver on or about July 26, 2002.
6. Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

⁸ The Respondent did not turn over the notes of Weaver's July 25, 2002 interrogation although they were subpoenaed by Counsel for General Counsel. Weaver's testimony is credited. General Counsel requests an adverse inference against the Respondent for failing to produce the notes of Weaver's interrogation. I draw an adverse inference that the documentation which is exclusively within the control of the Respondent, if produced, would not support the Respondent's position with respect to what was or was not said during Weaver's July 25, 2002 interrogation.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Nancy Weaver, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Labinal, Inc., of Pryor Creek, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully maintaining a rule which prohibits an employee from discussing another employee's pay without the knowledge and permission of the other employee.

(b) Unlawfully interrogating employees concerning their discussion of salaries and wages with each other.

(c) Unlawfully suspending and discharging its employee Nancy Weaver because employees engaged in concerted activities with each other for the purposes of mutual aid and protection by discussing employee salaries and wages with each other and through an employee representative, concertedly complained about employee salaries to the Respondent, and to discourage employees from engaging in these and other concerted activities

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act;

(a) Rescind the rule which prohibits an employee from discussing another employee's pay without the knowledge and permission of the other employee, and advise employees in writing that the rule has been rescinded.

(b) Within 14 days from the date of this Order, offer Nancy Weaver full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(c) Make Nancy Weaver whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Pryor Creek, Oklahoma copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 26, 2002.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 20, 2003

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT maintain a rule which prohibits you from discussing another employee's pay without the knowledge and permission of the other employee.

WE WILL NOT coercively question you about your discussions of salaries and wages with other employees.

WE WILL NOT suspend, discharge, or otherwise discriminate against any of you for discussing salaries and wages with other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the rule which prohibits you from discussing another employee's pay without the knowledge and permission of the other employee.

WE WILL, within 14 days from the date of the Board's Order, offer Nancy Weaver full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Nancy Weaver whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Nancy Weaver, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

LABINAL, INC.